

**FILED**

**MAY 31 2016**

  
CLERK

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION

COLENE BALD EAGLE

Plaintiff,

vs.

UNITED STATES OF AMERICA

Defendant.

CIV. 16-5039

**COMPLAINT**

COMES NOW the Plaintiff, by and through her attorneys, and states and alleges as follows:

**PARTIES**

1.

Plaintiff Colene Bald Eagle resides in South Dakota. She is a member of the Oglala Sioux Tribe and at the time of the incident resided in Martin, South Dakota.

2.

At all times relevant, Defendant, by and through the Department of the Interior, Bureau of Indian Affairs, contracted with the Oglala Sioux Tribe and its Police Department pursuant to 25 U.S.C. 450f, et seq., Indian Self Determination Act, to provide law enforcement and related services on the Pine Ridge Indian Reservation.

3.

At all times relevant, the Oglala Sioux Tribe and its Police Department operated a police department on the Pine Ridge Indian Reservation and employed numerous employees.

In doing and in omitting to do all things alleged herein, the Oglala Sioux Tribe, its Police Department and Corrections and all of its employees, including Sophia Janis Blacksmith, were performing functions under the contract entered into pursuant to 25 U.S.C. 450f, et seq.

### **JURISDICTION & VENUE**

4.

Plaintiffs invoke the jurisdiction of this Court pursuant to 28 U.S.C. 1346(b) and the Federal Tort Claims Act, 28 U.S.C. Section 2671 et seq., as amended and Pub. L. No. 103-138, Title 111, § 308, Nov. 11, 1993, 107 Stat. 1416.

### **FACTUAL ALLEGATIONS RELEVANT TO ALL CLAIMS**

5.

On or about July 30, 2015, Colene Bald Eagle was the driver of a vehicle traveling westbound on US Highway 18 near Mile Marker 112 at its intersection with BIA Road 27, known as Wounded Knee Junction.

6.

On or about July 30, 2015, Sophia Blacksmith was the driver of an Oglala Sioux Tribe corrections transport vehicle traveling eastbound on US Highway 18 near Mile Marker 112 at its intersection with BIA Road 27.

7.

Sophia Blacksmith turned the Oglala Sioux Tribe Corrections transport vehicle north across US Highway 18 in an attempt to travel north on BIA Road 27. In doing so, Backsmith failed to yield the right-of-way to Colene Bald Eagle's vehicle. Blacksmith's vehicle collided with Colene Bald Eagle's vehicle.

8.

During the collision, Bald Eagle sustained severe injuries that required her to be transported to the emergency room and hospitalized.

9.

While hospitalized, Bald Eagle underwent five surgeries. Her right leg was amputated below the knee.

10.

As a direct and proximate result of the collision, Bald Eagle sustained injuries and trauma, including, but limited to, personal injuries, a scalp laceration, a closed head injury, rib fractures, a fracture and dislocation of her right ankle, a partial amputation of her right leg, pain, suffering, loss of income, diminishment in quality of life, medical costs and other damages to be proven at trial.

11.

Sophia Blacksmith was subsequently charged with involuntary manslaughter as a result of the collision and the death of Bald Eagle's passenger Theresa Imitates Dog-Martinez.

#### **ADMINISTRATIVE REMEDIES**

12.

On November 13, 2015, Plaintiff timely filed her administrative tort claim form with the appropriate federal agency as required by law seeking compensation in the amount of \$5,510,000.00.

13.

The United States Department of the Interior notified Plaintiff in writing that Plaintiff's administrative tort claim form had been received on November 19, 2015. The claim was denied on May 3, 2016, entitling Plaintiff to commence this action, within six months thereafter.

**COUNT ONE**  
***Negligence***

14.

Plaintiff realleges the preceding paragraphs and incorporates them as if set forth fully herein.

15.

The Defendant and the Department of the Interior, Bureau of Indian Affairs, agencies of the United States of America, acting by and through Sophia Janis Blacksmith, a servant and employee of the Oglala Sioux Tribe Police and Corrections Department, deemed to be an employee and agencies of the United States, acting within the course and scope of employment, owed a duty of care to Plaintiff to exercise ordinary care and awareness in the operation, management, maintenance and control of the Oglala Sioux Tribe Corrections transport vehicle.

16.

At the time of the collision, the Defendant and the Department of the Interior, Bureau of Indian Affairs, agencies of the United States of America, acting by and through Sophia Janis Blacksmith, negligently and carelessly departed from the proper standard which caused the collision.

17.

The Defendant and the Department of the Interior, Bureau of Indian Affairs, agencies of the United States of America, acting by and through Sophia Janis Blacksmith, breached its duties owed to the Plaintiff and were negligent in several respects, including, but not limited to:

- (a) Failing to keep a proper lookout for other vehicles;
- (b) Failing to keep Defendant's vehicle under control;
- (c) Failure to obey traffic laws;
- (d) Otherwise generally failing to operate the vehicle in a safe and prudent manner.

18.

As a direct and proximate cause of the Defendant's negligence, Plaintiff has sustained injuries, including, but not limited to, personal injuries; past, present, and future pain and suffering; loss of enjoyment of the capacity of life; emotional distress; lost wages; property damage; past and future medical costs and expenses; and other general and special damages.

19.

If Defendant were a private person it would be liable to Plaintiff in accordance with the laws of the State of South Dakota and the Oglala Sioux Tribe.

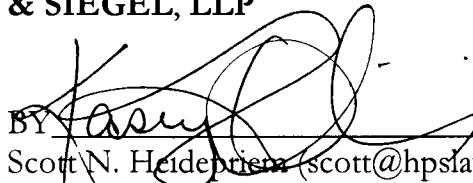
WHEREFORE, Plaintiff prays for the following relief:

- (1) For Plaintiff's compensatory, general, and special damages in an amount that the jury deems just and proper under the circumstances;
- (2) For Plaintiff's costs and disbursements herein;

- (3) For pre-judgment and post-judgment interest; and
- (4) For such other and further relief as the Court determines to be just and proper.

Dated this 31 day of May, 2016.

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